W E BALASINGAM

v.

MALAYSIAN BAR

HIGH COURT MALAYA, IPOH
BALIA YUSOF WAHI J
[ORIGINATING SUMMONS NO: 24-809-05]
14 JULY 2006

LEGAL PROFESSION: *Malaysian Bar - Annual General Meeting - Validity of - Notice of adjournment - Election of office bearers - Whether Annual General Meeting carried out in accordance with provisions of s. 70(2) Legal Profession Act 1976*

STATUTORY INTERPRETATION: *Construction of statutes - Literal approach - Whether words of statute clear and unambiguous - Intention of Parliament - Whether purposive approach inapplicable - Legal Profession Act 1976, s. 70(2)*

The plaintiff, a senior member of the Perak Bar, filed an application in encl. 1 effectively seeking a declaration regarding the validity of the Annual General Meeting ('AGM') of the Perak Bar. He also sought determination as to whether the election of the office bearers of the Perak Bar Committee for the year 2005/2006 was valid and in accordance with the provisions of the Legal Profession Act 1976 ('the Act'). The respondent filed an application to strike out the same under O. 18 r. 19 of the Rules of the High Court 1980. The sole issue requiring determination was whether the AGM was carried out in accordance with the provisions of s. 70(2) of the LPA.

Held (dismissing the plaintiff's application in encl. 1):

(1) The words in s. 70(2) of the LPA are clear and unambiguous, and the intention of Parliament can easily be gathered from them. The proviso to the section "unless otherwise notified to members" clearly gives a choice to the State Bar Committee to prefer a different time and place for the adjourned meeting or to do otherwise, which in this case the defendant, in choosing to adjourn the meeting to a later time on the same day and in the same place, had done. To adopt the plaintiff's submission that the notice of the adjourned meeting could only

A be issued after the outcome of the 'first' AGM would certainly lead to absurdity and a departure from what the legislature had intended. In the premises, the defendant had complied with s. 70(2) of the LPA. (paras 6, 12 & 13)

B **Case(s) referred to:**

Chin Choy & Ors v. Collector of Stamp Duties [1979] 1 MLJ 69 ***(refd)***

Hiralal Ratan Lal v. The Sales Tax Officer, Section III Kanpur (AIR) [1973] SC 1034 ***(refd)***

Magor & St Mallons Rural District Council v. Newport Corporation [1952] AC 189 HL ***(refd)***

C *Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd [2002] 1 CLJ 645 FC* ***(refd)***

PP v. Sihabudin & Anor [1980] 2 MLJ 273 ***(refd)***

Wardburton v. Loveland [1832] 2 D & Cl (HL) 480 ***(refd)***

Wong Pot Heng v. Zainal Abidin Putih [1990] 2 CLJ 174; [1990] 1 CLJ (Rep) 312 SC ***(foll)***

D

Woodward v. Watts [1853] 2 E&B 452 ***(refd)***

Yeo Peck Chie v. KS Gill & Co [1946] MLJ 131 ***(refd)***

Legislation referred to:

Legal Profession Act 1976, s. 70(1), (2)

E Rules of the High Court 1980, O. 18 r. 19

For the plaintiff - Arivanandhan (WE Balasingham with him); M/s WE Balasingham

For the defendant - Puravelan (Raam Kumar, KB Tan & Fredrick Indran Nicholas with him); M/s KB Tan, Kumar & Partners

F

Reported by Suresh Nathan

JUDGMENT

G

Balia Yusof Wahi J:

[1] The plaintiff, a senior member of the Perak Bar filed an application in encl. 1 effectively seeking a declaration as to the validity of the Annual General Meeting of the Perak Bar held at 4pm on 4 March 2005 at Mahkamah Tinggi (No. 1) Ipoh. The plaintiff also sought determination of whether the election of the office bearers of the Perak Bar Committee for the year 2005/2006 was valid and in accordance with the provisions of the Legal Profession Act 1976.

H

I

[2] Responding to the above said application, the respondent filed an application to strike out the same under O. 18 r. 19 of the Rules of the High Court 1980 on the ground that the plaintiff's application discloses no reasonable cause of action, was scandalous, frivolous or vexatious and also abuse of the court's process.

[3] The undisputed facts of the case reveal that on 17 February 2005 the Honorable Secretary of the Perak State Bar Committee issued a notice pursuant to s. 70 of the Legal Profession Act 1976 which reads:

NOTICE OF MEETING OF STATE BAR

Pursuant to Section 70 of the Legal Profession Act 1976 (as amended by the Legal Profession (Amendment) Act A 507/83) I am required and do hereby summon you to an Annual General Meeting of Members of the Perak State Bar to be held at 3.00 pm on Friday, the 4th day of March, 2005 at the High Court No. 1 Ipoh, Perak.

In the event no quorum is reached by 3.30 pm the said meeting will stand adjourned and be held at 4.00 pm on the same day and venue.

Dated the 7th day of February 2005

(Sgd)
Prithi Verma
Hon. Secretary
2004/2005

[4] On 4 March 2005 at 3.30pm there was no quorum and the meeting was adjourned. At 4pm on the same day and at the same venue, the Annual General Meeting was carried out and resolutions were passed including the appointment of new committee members for the Perak Bar 2005/2006. The question that has been posed before the court is whether the said Annual General Meeting was carried out in accordance with the provisions of s. 70(2) of the Legal Profession Act 1976 and whether the election of the new office bearers are valid and in accordance with the said provision. It has been agreed between the parties that this issue be argued between them at the hearing of encl. 7 which is an application by the defendant to strike out the plaintiff's claim under O. 18 r. 19 of the Rules of the High Court. The parties also agreed that the defendant's application in encl. 7 be decided

A solely on the issue of construction and interpretation of s. 70(2) of the Legal Profession Act 1976. The court agrees with the approach suggested by the parties and holds that the defendant's application to strike out the plaintiff's application will be decided solely on the issue of the construction and interpretation of
B s. 70(2) of the Legal Profession Act 1976 and whether the defendant has complied with the same.

[5] For ease of reference subsection (1) and (2) of s. 70 of the Legal Profession Act 1976 reads as follows:

C

70. Annual General Meeting of State Bar

(1) The Secretary of each State Bar shall, before the first day of March in each year, summon all members of the State Bar to an annual general meeting to be held in that month
D at a time and place to be fixed by him. Only members of the State Bar shall be entitled to attend and vote at the meeting.

(1A) ...

E

(2) At every annual general meeting, the Chairman of the State Bar Committee shall preside and in his absence the most senior member present who is wiling to preside shall preside and the quorum shall be one-third of the total number of members of the State Bar. If a quorum is not
F present within half an hour from the time appointed for holding the meeting it shall stand adjourned to the same day in the week next following at the same time and place unless otherwise notified to members by the State Bar Committee.

G

[6] It is without doubt that a notice under subsection (1) of the said section must precede any Annual General Meeting indicating the time and place of such meeting. The plaintiff contends that reading both subsections (1) and (2) together, the notice issued
H by the defendant in this case is invalid and has contravened the above said provisions. In the plaintiff's submission, the notice of the "adjourned annual general meeting" can only come about after the outcome of the "first annual general meeting". In other words the plaintiff is contending that the notice given in this case which
I is given before the outcome of the "first annual general meeting" is invalid. For the defendant, it is submitted that the words "unless

otherwise notified to members" clearly affords a choice to the defendant either to postpone the meeting to the week next following at the same time and place or to do otherwise which in this case the defendant has chosen to adjourn the meeting to 4pm the same day and place. I am more inclined to the defendant's view for the very reason that the clear and unambiguous words of s. 70(2) of the Act, affords the defendant with that choice. It has been well established that in construing a statutory provision, the first and foremost rule of construction is the literary construction. The Federal Court in *Megat Najmuddin Dato' Seri (Dr) Megat Khas v. Bank Bumiputra Malaysia Bhd* [2002] 1 CLJ 645 cited with approval a passage from the Indian Supreme Court case of *Hiralal Ratan Lal v. The Sales Tax Officer, Section III Kanpur* (AIR) [1973] SC 1034 at p. 1039 which said:

> In construing a statutory provision, the first and foremost rule of construction is the literary construction. All we have to see at the very outset is what does the provision say? If the provision is unambiguous and if from that provision the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intent is not clear.

[7] In the case of *Chin Choy & Ors v. Collector of Stamp Duties* [1979] 1 MLJ 69 at 70, the Federal Court said:

> It may be apposite at this stage to recall certain basic principles in the interpretation of statutes. Applying the words and phrases of a statute in their ordinary meaning has been said to be the first and most elementary rule of construction and the second is said to be to construe the phrases and sentences according to the rules of grammar.
>
> It is very desirable in all cases to adhere to the words of an Act of Parliament, giving to them that sense which is their natural import in the order in which they are placed, per Bayley J in *R v. Ramsgate (Inhabitants)* [1827] 6 B&C 712.

[8] Willan CJ in *Yeo Peck Chie v. K.S. Gill & Co.* [1946] MLJ 131 at 133 said:

> ln interpreting the provisions of a statute, one of the cardinal rules is to adhere as closely as possible to the literal meaning of the words. If an authority is required for this, it will be found in the case of *Abbott v. Middleton* [1858] 7 HLC 114). Once the literal meaning has been established then, however unjust, arbitrary or inconvenient such meaning may be, it must receive its full effect

– see *Biffin v. Yorke* (5 Man & G 428). Nor is it the function of the Court to scan the wisdom or policy of a statute – see *May v. The Great Western Railway Co* (41 LJQB 104).

[9] Much earlier, the English Courts have stated in similar terms. In *Woodward v. Watts* [1853] 2 E&B 452, the court said:

> The golden rule in the construction of an Act of Parliament is to put on the words of it their natural and grammatical construction although that may lead to some inconvenience, absurdity, or mischief; it being for the judges to construe Acts of Parliament; and not to legislate, and for the legislature to provide a remedy when one is wanted.

[10] In *Wardburton v. Loveland* [1832] 2 D. & Cl. (HL) 480, 489 Tindal CJ said:

> Where the language of an Act is clear and explicit, we must give effect to it, whatever may be the consequences, for in that case the words of the statute speak the intention of the legislature.

[11] Lord Simonds in *Magor & St. Mallons Rural District Council v. Newport Corporation* [1952] AC 189 HL stated that the duty of the court is to interpret the words of the statute that the legislature has used and our Federal Court in the case of *PP v. Sihabudin & Anor* [1980] 2 MLJ 273 at p. 275 said:

> Thirdly, if the law-maker so amends the law, to paraphrase the words of Lord Diplock at page 541 in Duport Steels Ltd. v. Sirs [1980] 1 All ER 529, the role of the judiciary is confined to ascertaining from the words that the law-maker has approved as expressing its intention what that intention was and to giving effect to it. Where the meaning of the words is plain and unambiguous it is not for judges to invent fancied ambiguities as an excuse for failing to give effect to its plain meaning because they themselves consider that the consequences of doing so would be inexpedient, or even unjust or immoral; or to paraphrase the words of Lord Scarman at page 551 in the same case in the field of statute law the judge must be obedient to the will of the law-maker as expressed in its enactments, the judge has power of choice where differing constructions are possible, but he must choose the construction which in his judgment best meets the legislative purpose of the enactment. Even if the result be unjust but inevitable, he must not deny the statute; unpalatable statute law may not be disregarded or rejected, simply because it is unpalatable: the judge's duty is to interpret and apply it.

[12] In my view, the words in s. 70(2) of the Legal Profession Act 1976 are clear and unambiguous and as such the purposive approach as suggested by the plaintiff to the interpretation of the said section is inapplicable. Mohd Azmi SG in *Wong Pot Heng v. Zainal Abidin Putih* [1990] 2 MLJ 410 at p. 414 observed that:

> It is a well established principle that the purposive approach to the interpretation of legislation only applies where any doubt arises from the terms or words employed by the legislature. But where the words are precise and unambiguous, then the literal and strict construction rule should apply.

[13] The words in the section are crystal clear and the intention of Parliament can easily be gathered from those words used. The proviso to the section "unless otherwise notified to members" clearly gives a choice to the State Bar Committee to prefer a different time and place for the adjourned meeting. To adopt the plaintiff's submission that the notice of the adjourned meeting can only be issued after the outcome of the 'first' annual general meeting will certainly lead to absurdity and a departure from what the legislature has intended. In the premises, I hold that the defendant has complied with the provision of s. 70(2) of the Legal Profession Act 1976.

[14] As agreed by the parties, this matter will be disposed of under O. 14A of the Rules of the High Court and only prayer (a) in encl. 1 is for the court's determination. Accordingly this court makes no order in respect of encl. 7 and consequentially the plaintiff's application in encl. 1 is hereby dismissed.